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NOTE CHANGES MADE BY THE COURT

18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **Western Division**

21 ANGEL AGUIAR, Individually and on
Behalf of All Others Similarly Situated,

22 Plaintiff,

23 v.

24 MERISANT COMPANY and WHOLE
25 EARTH SWEETENER COMPANY, LLC,

26 Defendants.

27 Case No.: 2:14-cv-00670-RGK(AGRx)

28 **CLASS ACTION**

STIPULATION AND [PROPOSED]
PROTECTIVE ORDER

District Judge: Hon. R. Gary Klausner

Magistrate: Judge Alicia G. Rosenberg

Action Filed: January 28, 2014

Trial Date: None Set

NOTE CHANGES MADE BY THE COURT

STIPULATED PROTECTIVE ORDER

WHEREAS it is anticipated that among the documents which may be produced in connection with the potential litigation of this matter will be information that is protected from disclosure by the privacy rights that attach to trade secrets, and/or information otherwise properly regarded by one or more of the parties as private, sensitive, proprietary, financial, and/or confidential;

IT IS THEREFORE STIPULATED, AGREED, AND JOINTLY REQUESTED by Plaintiff Angel Aguiar (“Plaintiff”) and Defendants Merisant Company and Whole Earth Sweetener Company, LLC (“Defendants”) (collectively, the “Parties”), by and through their respective counsel, that a protective order should be entered according to the following terms and provisions:

DEFINITIONS

1. "Matter" means Angel Aguiar v. Merisant Company, and Whole Earth Sweetener Company, LLC, currently pending in the Central District of California, Case No. 2:14-cv-00670-RGK(AGRx).

2. "Confidential Information" means information (i) which is produced to a party in the Matter pursuant to any discovery method allowed under statute, rule, or case law; and (ii) which is designated as Confidential pursuant to Paragraph 6 below. Confidential Information shall not include any information (i) which is in the possession of the Receiving Party (as defined below), provided that the source of the information was not bound by a contractual, legal, or fiduciary obligation of confidentiality, or which is publicly known or available prior to its production through discovery in the Matter; or (ii) which the Receiving Party obtains from a source other than the Producing Party (as defined below), provided that the source of the information was not bound by a contractual, legal, or fiduciary obligation of confidentiality, or otherwise becomes publicly available, without any violation of this Protective Order by the Receiving Party.

1 3. “Qualified Person” means any individual who falls into one of the
2 following categories:

3 a. Attorney of record for a party in the Matter or member, associate,
4 paralegal, or employee of the firm where such attorney practices, or an employee of an
5 independent photocopying or microfilming service utilized by such attorney in the
6 Matter;

7 b. In-house counsel or designated legal personnel for all parties;

8 c. Any other personnel working in the employment of the Parties or their
9 attorneys of record in the Matter, to the extent disclosure is reasonably necessary in
10 connection with the litigation or settlement of this Matter;

11 d. Up to three designees from any non-party, including insurers, that may
12 have defense and/or indemnity obligations for claims against the Parties, who shall
13 have signed an undertaking in the form attached as Exhibit 1 before reviewing any
14 documents pursuant to this order;

15 e. Vendors to whom it is necessary to disclose Protected Material for the
16 purpose of assisting Outside Counsel of record in this action;

17 f. Any person indicated on the face of the material as having written or
18 received such material during the course of his or her employment or consultancy, and
19 any person identified within such material if the context of the material indicates that
20 such person would have received or otherwise had access to the information discussed
21 therein;

22 g. Independent testifying or non-testifying experts or trial consultants (*i.e.*,
23 persons with expertise who are not currently employed or performing non-litigation
24 consulting with any competitors of the Parties, and who have no intention or
25 expectation of being employed or performing non-litigation consulting with any
26 competitors of the Parties) retained by such counsel or by the Parties solely as a an
27 independent expert in connection with this proceeding, provided, however, that no
28 information, documents, or things designated as Confidential shall be disclosed to any

1 testifying or non-testifying experts unless and until such persons have first been
2 supplied with and have read a copy of this Order and have executed an undertaking in
3 the form annexed hereto;

4 h. Stenograph reporter involved in any deposition, hearing, trial or other
5 proceeding in this Matter;

6 i. Officers of this Court and their supporting personnel or officers of any
7 appellate court to which any appeal may be taken or in which review is sought,
8 pursuant to Paragraph 14 below; or

9 j. Any mediator or settlement officer agreed upon by the Parties.

SCOPE

11 4. The protections conferred by this Order cover not only discovery
12 materials that are designated as “Confidential,” but also any information copied or
13 extracted from materials designated as “Confidential,” as well as all copies, excerpts,
14 summaries, or compilations thereof, including, without limitation, testimony,
15 conversations, or presentations and submissions by parties or Counsel to the Court, as
16 well as other settings that contain or could reveal Protected Material.

DURATION

18 5. All obligations and duties arising under this Protective Order shall
19 survive the termination of this action unless the party designating the material as
20 “Confidential” (the “Designating Party”) agrees otherwise in writing or the Court
21 otherwise orders.

AGREEMENT

23 6. A party (the “Designating Party”) may designate as “Confidential” those
24 materials, whether in written, oral, electronic, graphic, audiovisual, or any other form,
25 which that party in good faith believes contain confidential information that is used by
26 it in, or pertaining to, its business, which information is not generally known and
27 which that party would normally not reveal to third parties or, if disclosed, would
28 require such third parties to maintain in confidence.

1 7. Any party who produces Confidential Information (the “Producing
2 Party”) may designate materials produced or exchanged during discovery as
3 “Confidential” by legibly marking the legend “Confidential” on each page of
4 such materials. Any Producing Party or any other party may so designate any
5 materials in the reasonable exercise of such party’s discretion; provided, however, by
6 agreeing to this Protective Order, no party waives the right to challenge any other
7 party’s designation of any document as “Confidential.”

8 8. A party who contests any other party’s designation of any document as
9 “Confidential” (the “Challenging Party”) shall attempt to resolve the dispute with the
10 party making the designation, and, if an agreement cannot be reached, may challenge
11 the designation with the Judge presiding over this Matter as provided herein.

12 9. Confidential Information shall be used by a Party who receives the
13 information (the “Receiving Party”) solely for the purposes of discovery, pleadings,
14 motions, briefs, potential settlement, and preparation for the trial or hearing in this
15 Matter and on appeal, if any, and for no other purpose.

16 10. A Receiving Party may disclose Confidential Information only to a
17 Qualified Person, or to a qualified witness at a deposition, unless otherwise agreed to
18 in writing between the party or non-party that produced the Confidential Information
19 and the party wishing to disclose the Confidential Information. If any Party intends to
20 disclose any Confidential Information to a witness at a deposition, and such witness
21 would not otherwise be entitled to access to such Confidential Information under the
22 terms of this Order, counsel for the Disclosing Party shall provide written notice to the
23 Producing Party and/or the Designating Party of the intention to so disclose the source
24 of or the specific document containing the Confidential Information at least two
25 business days prior to such intended disclosure.

26 11. No Receiving Party shall provide or disclose Confidential Information to
27 any person, including a Qualified Person, at any time or in any form or manner unless,
28 in the good faith judgment of the disclosing person, that person has a present need to

1 hear, know, or review such information in conjunction with the proceedings in this
2 Matter or for the purpose of assisting any attorney of record in the Matter.

3 12. No Receiving Party shall disclose Confidential Information to a person
4 other than a Qualified Person except upon the prior express written consent of the
5 party who has designated the item as Confidential Information.

6 13. Without written permission from the Designating Party or a court order
7 secured after appropriate notice to all interested persons, a Receiving Party may not
8 file in the public record in this action any Confidential Information. All transcripts,
9 depositions, exhibits, and other documents and things filed or received with the Court
10 containing Confidential Information, or any pleading purporting to reproduce or
11 paraphrase such information, shall be filed in compliance with Civil Local Rule 79-
12 5.1, in sealed envelopes or other appropriate sealed containers on which shall be
13 endorsed the caption of the Matter, a description of the contents of such sealed
14 envelope or container, and the legend "Confidential." Any party submitting any
15 Confidential Information to the Court shall request that the Court maintain such
16 Confidential Information under seal; provided, however, that the Designating Party
17 shall bear the burden of defending such designation if challenged.

18 14. Any person making, or causing to be made, copies of any Confidential
19 Information shall make certain that each copy bears the legend "Confidential" on each
20 page. This provision is not intended to modify the manner by which the Court, its
21 officers, and personnel manage records relating to this proceeding.

22 15. Each party shall, at the election of the Receiving Party, either destroy or
23 return all Confidential Information, including any copies thereof, to the Producing
24 Party, and shall confirm in writing that all the Confidential Information, including
25 copies thereof in the Receiving Party's possession, custody or control, has been
26 returned or destroyed within thirty (30) days after the first of any of the following: the
27 case being resolved by final judgment, appeal, settlement, or some combination
28 thereof, or otherwise.

1 16. Neither of the Parties, no Qualified Person, nor any other entity, other
2 than the Designating Party, shall retain copies of the Confidential Information,
3 including any copies thereof, or referenced thereto, after the time specified in
4 Paragraph 15 herein. Any exceptions to this Paragraph shall be in writing by a duly
5 authorized representative of the Designating Party. Notwithstanding the terms of
6 Paragraphs 12 and 13 hereof, the Parties to this Matter may retain, and not return, one
7 complete copy of the pleadings as actually filed with the Court. No provision in this
8 Paragraph is intended to modify the manner by which the Court, its officers, and
9 personnel manage records relating to this proceeding.

10 17. The inadvertent or unintentional failure to designate any discovery
11 material as “Confidential” pursuant to Paragraph 6 shall not be deemed a waiver in
12 whole or in part of a Designating Party’s claim of confidentiality. Any discovery
13 material produced by a Party or non-party that should have been designated
14 “Confidential” but is inadvertently produced without such designation may
15 subsequently be designated as “Confidential.” Any party that seeks to so designate
16 discovery material already produced must, within thirty days after discovering the
17 inadvertent production, provide, at its own expense, substitute discovery material
18 bearing the “Confidential” designation. Upon receipt of the substituted discovery
19 material, each Receiving Party must return or destroy all copies of the undesignated
20 discovery material.

21 18. The inadvertent or unintentional disclosure by the Producing Party of
22 Confidential Information, regardless of whether the information was so designated at
23 the time of disclosure, shall not be deemed a waiver in whole or in part of a
24 Designating Party’s claim of confidentiality, either as to the specific information
25 disclosed or as to any other information relating thereto on the same or related subject
26 matter. The Producing Party may recall any such inadvertently or unintentionally
27 disclosed Confidential Information by giving written notice to all parties, as soon as
28 reasonably possible after the Producing Party becomes aware of the inadvertent or

1 unintentional disclosures. Upon receipt of the notice that the Confidential Information
2 was inadvertently disclosed and is being recalled by the Producing Party, the
3 Receiving Party must return or destroy (at the Receiving party's election) all copies of
4 the inadvertently disclosed material.

5 19. The inadvertent or unintentional disclosure by the Producing Party of
6 documents or information subject to the attorney-client privilege, work product
7 immunity or any other applicable privilege shall not constitute a waiver of, nor a
8 prejudice to, any claim that such or related material is protected information,
9 privileged, or protected by the work product immunity or any other applicable
10 privilege, provided that the Producing Party notifies the Receiving Party in writing
11 within ten business days after discovery of such inadvertent production or disclosure.
12 Such inadvertently produced or disclosed documents or information, including all
13 copies thereof, shall be returned to the Producing Party or destroyed (at the Receiving
14 Party's election) immediately upon request, and the Receiving Party shall immediately
15 destroy any notes or other writing or recordings that summarize, reflect, or discuss the
16 content of such privileged or protected information. No use shall be made of such
17 documents or information during deposition or at trial, nor shall such documents or
18 information be provided to anyone who did not already have access to them prior to
19 the request by the Producing Party that they be returned. In the case of an
20 inadvertently produced or disclosed document, the Producing Party shall include the
21 discovery material in a privilege log identifying such inadvertently produced or
22 disclosed document. The Receiving Party may move the Court for an Order
23 compelling production of any inadvertently produced or disclosed document or
24 information, but the motion shall not assert as a ground for production the fact of the
25 inadvertent production or disclosure, nor shall the motion disclose or otherwise use
26 the content of the inadvertently produced document or information (beyond any
27 information appearing on the above-referenced privilege log) in any way in
28 connection with any such motion.

1 20. Any party or non-party may challenge a designation of confidentiality at
2 any time. Unless a prompt challenge to a Designating Party's confidentiality
3 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
4 economic burdens, or a significant disruption or delay of the litigation, a party does
5 not waive its right to challenge a confidentiality designation by electing not to mount a
6 challenge promptly after the original designation is disclosed. The Challenging Party
7 shall initiate the dispute resolution process by providing written notice of each
8 designation it is challenging and describing the basis for each challenge. Additionally,
9 the written notice shall request that the Parties confer in good faith to attempt to
10 eliminate the need for motion practice, or at least, eliminate as many disputes as
11 possible. To avoid ambiguity as to whether a challenge has been made, the written
12 notice must recite that the challenge to confidentiality is being made in accordance
13 with this specific paragraph of the Protective Order.

14 Consistent with Central District of California Local Rule, Civ. L.R. 37-1, the
15 Parties shall attempt to resolve each challenge in good faith and must begin the
16 process by conferring directly (in voice to voice dialogue; other forms of
17 communication are not sufficient) within ten days of the date of service of notice. In
18 conferring, the Challenging Party must explain the basis for its belief that the
19 confidentiality designation was not proper and must give the Designating Party an
20 opportunity to review the designated material, to reconsider the circumstances, and, if
21 no change in designation is offered, to explain the basis for the chosen designation. A
22 Challenging Party may proceed to the next stage of the challenge process only if it has
23 engaged in this meet and confer process first or establishes that the Designating Party
24 is unwilling to participate in the meet and confer (as discussed in Civ. L.R. 37-2.4).

25 If the Parties cannot resolve a challenge without court intervention, consistent
26 with Central District of California Local Rule, Civ. L.R. 37-2, the Parties shall
27 formulate a written stipulation, which, in one document, signed by both counsel,
28 identifies all disputes, and for each issue, sets forth the Parties' respective contentions

1 and points and authorities in support thereof. The Challenging Party must personally
2 deliver, email or fax to the Designating Party's counsel the Challenging Party's
3 portion of the stipulation, together with all declarations and exhibits within twenty-
4 one days of the Parties agreeing that the meet and confer process will not resolve their
5 dispute and in accordance with Civ. L.R. 7 and 79-5.1, if applicable. Within seven
6 days of receiving the Challenging Party's portion of the stipulation, the Designating
7 Party shall personally deliver, email, or fax to the Challenging Party's counsel the
8 Designating Party's portion of the stipulation, together with all declarations and
9 exhibits. Failure by the Challenging Party to personally deliver, email or fax to the
10 Designating Party's counsel the Challenging Party's portion of the stipulation within
11 twenty-one days shall automatically waive their challenge to the confidentiality
12 designation. Consistent with Central District of California Local Rule, Civ. L.R. 37-
13 2.3, the Parties may file a supplemental memorandum of law not later than fourteen
14 days prior to the hearing date. For the avoidance of doubt, this Paragraph is intended
15 to implement, and not substantively modify Civ. L.R. 37-1 and Civ. L.R. 37-2
16 (including the Joint Stipulation requirement).

17 Frivolous challenges, and those made for an improper purpose (e.g., to harass or
18 impose unnecessary expenses and burdens on other parties) may expose the
19 Challenging Party to sanctions. All parties shall continue to afford the material in
20 question the level of protection to which it is entitled under the Producing Party's
21 designation until the court rules on the challenge.

22 21. If a party is served with a subpoena or a court order issued in other
23 litigation that compels disclosure of any information or items designated in this action
24 as "CONFIDENTIAL," that party must:

25 a. (i) Promptly notify in writing the Designating Party. Such notification
26 shall include a copy of the subpoena or court order; (ii) promptly notify in writing the
27 party who caused the subpoena or order to issue in the other litigation that some or all
28 of the material covered by the subpoena or order is subject to this Protective Order.

1 Such notification shall include a copy of this Stipulated Protective Order; and (iii)
2 cooperate with respect to all reasonable procedures sought to be pursued by the
3 Designating Party whose Confidential Information may be affected.

4 b. If the Designating Party timely seeks a protective order, the Party served
5 with the subpoena or court order shall not produce any information designated in this
6 action as "CONFIDENTIAL" before a determination by the court from which the
7 subpoena or order issued, unless the party has obtained the Designating Party's
8 permission. The Designating Party shall bear the burden and expense of seeking
9 protection in that court of its confidential material – and nothing in these provisions
10 should be construed as authorizing or encouraging a Receiving Party in this action to
11 disobey a lawful directive from another court.

12 *With the agreement of the Non-Party,*
13 22. The terms of this Order are applicable to information produced by a Non-
14 Party in this action and designated as "CONFIDENTIAL." Such information
15 produced by non-parties in connection with this litigation is protected by the remedies
16 and relief provided by this Order. Nothing in these provisions should be construed as
17 prohibiting a non-party from seeking additional protections. In the event that a party
18 is required, by a valid discovery request, to produce a non-party's confidential
19 information in its possession, and the party is subject to an agreement with the non-
20 party not to produce the non-party's confidential information, then the Producing
21 Party shall:

22 a. Promptly notify in writing the Requesting Party and the non-party that
23 some or all of the information requested is subject to a confidentiality agreement with
24 a non-party;

25 b. Promptly provide the non-party with a copy of the Stipulated Protective
26 Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and

28 c. Make the information requested available for inspection by the non-
party. If the non-party fails to object or seek a protective order from this court within

1 14 days of receiving the notice and accompanying information, the Producing Party
2 may produce the non-party's confidential information responsive to the discovery
3 request. If the non-party timely seeks a protective order, the Producing Party shall not
4 produce any information in its possession or control that is subject to the
5 confidentiality agreement with the non-party before a determination by the court.¹
6 Absent a court order to the contrary, the non-party shall bear the burden and expense
7 of seeking protection in this court of its Confidential Information.

8 23. If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Confidential Information to any person or in any circumstance not
10 authorized under this Stipulated Protective Order, the Receiving Party must
11 immediately (a) notify in writing the Designating Party of the unauthorized
12 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
13 Confidential Information, (c) inform the person or persons to whom unauthorized
14 disclosures were made of all the terms of this Order, and (d) request such person or
15 persons to execute the attached Exhibit 1.

16 24. The parties agree that they shall be bound by this Stipulation upon
17 signing by counsel and shall protect any and all Confidential Information as provided
18 herein, even if this Stipulation is not approved by the Court. In the event that the
19 Court denies approval of this Stipulation as submitted, any party receiving
20 Confidential Information shall, within thirty days, at the election of the Receiving
21 Party, either destroy or return all Confidential Information to the Producing Party as
22 provided in Paragraph 16 herein and shall confirm in writing that the materials that
23 have been returned or destroyed constitute all the Confidential Information, including
24 copies thereof, in that party's possession, custody, or control.

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¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 25. Any Party named, served, and appearing in this action after the date this
2 Order is entered shall be bound by its terms, ~~upon agreement by that Party or~~
~~effective once the Order has been served~~
~~by Court order.~~
3 ~~upon such Party, unless the Court orders otherwise on good cause shown.~~ Any Party
4 who causes another Party to be added to this action after the entry of this Order shall
5 serve that new Party with a copy of this Order and any subsequent amendments to it at
6 the time it serves its pleading and summons.

7 IT IS SO STIPULATED.
8

9 Dated: March 27, 2014

10 Respectfully submitted,
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Attorneys for Plaintiff

I, Joseph P. Guglielmo, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] PROTECTIVE ORDER. In compliance with Civil Local Rule 5-4.3.4(a)(2)(i), I hereby attest that C. Robert Boldt has concurred in this filing.

s/ Joseph P. Guglielmo
Joseph P. Guglielmo

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ORDER

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The parties having stipulated to the foregoing and good cause appearing, IT IS
3 SO ORDERED.

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Dated: 4/22/2014

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Alicia G. Rosenberg

Honorable Alicia G. Rosenberg
United States Magistrate Judge

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1 EXHIBIT 1

2 *Angel Aguiar v. Merisant Company and Whole Earth Sweetener Company, LLC*

3 Central District of California

4 Case No. 2:14-cv-00670-RGK(AGRx)

5

6 **UNDERTAKING TO ABIDE BY PROTECTIVE ORDER**

7 I, _____, declare that my address is _____.
8 _____.
9 My current employer is _____ and my occupation is _____.

10

11 1. I have received a copy of the Stipulated Protective Order in the above-
12 captioned action. I have carefully read and understand the provisions of the Stipulated
13 Protective Order.

14 2. I will comply with all of the provisions of the Stipulated Protective
15 Order. I will hold in confidence, will not disclose to anyone not qualified under the
16 Stipulated Protective Order, and will use only for purposes of this action any
17 CONFIDENTIAL INFORMATION that is disclosed to me.

18 3. Promptly upon termination of this action, I will return any
19 CONFIDENTIAL materials that may come into my possession to the outside
20 attorneys representing my employer or the attorneys who furnished those documents
21 to me.

22 4. I hereby submit to the jurisdiction of this Court for the purpose of
23 enforcement of the Stipulated Protective Order in this action.

24

25 I declare under penalty of perjury that the foregoing is true and correct.

26

27 Dated: _____ Signature: _____

28 Print Name: _____